

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:08CV498-1-MU

MICHAEL McNEILL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
OFFICER GERMANY, et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

**ORDER**

**THIS MATTER** comes before the Court upon Plaintiffs Motion for Reconsideration, filed November 14, 2008.

On November 4, 2008, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 alleging that on October 18, 2008, Defendant Germany, a correctional officer at Lanesboro Correctional Institution, used excessive force against him in violation of his federal constitutional rights. On November 10, 2008, after determining that Plaintiff had failed to fully exhaust his administrative remedies, this Court dismissed Plaintiff's Complaint without prejudice.

Plaintiff has now filed a Motion to Reconsider stating that he "comes with more facts in proof of constitutional violations." Because this Court dismissed Plaintiff's claim against Defendant Germany for excessive force on October 18, 2008, the only fact that would cause this Court to reconsider its earlier Order would be proof that Plaintiff fully exhausted that claim prior to filing his Complaint. Plaintiff has not provided such proof. Rather, Plaintiff has submitted a grievance

complaining about a different, prior, incident. Again, the Court reminds Plaintiff that when he fully exhausts his administrative remedies with regard to his excessive force claim against Officer Germany he may file a new Complaint about that incident if he so wishes.

**IT IS THEREFORE ORDERED THAT** Plaintiff's Motion for Reconsideration is **DENIED.**

Signed: November 20, 2008

A handwritten signature in cursive script, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen  
United States District Judge

